EME COURT, U. S.

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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of The United States

OCTOBER TERM 1970

NO. [redacted] 248

INDIANA REVENUE BOARD, ET AL.,

Petitioners,

v.

STATE OF INDIANA, on the relation of the City of Indianapolis, as successor in interest to the Mass Transportation Authority of Greater Indianapolis, a municipal corporation, and Richard M. Givan and John F. Neff,

Respondents.

RESPONDENTS APPENDICES TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF INDIANA

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IN THE

Supreme Court of The United States

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NO. 1680

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APPENDIX A

Petitioners on page 1 of their Appendices, in Appendix A state as follows:

"No. 767 A39
Appellate Court of Indiana
In Banc
Dec. 16, 1969
Transfer Denied Dec. 17, 1969"

This should be:

"No. 767 A 39
Appellate Court of Indiana
In Banc
Dec. 16, 1969
Transfer Denied Feb. 3, 1970"

APPENDIX B

REMOVAL STATUTE

Burns § 3-2121. Restraining or mandating actions of public officials—Original jurisdiction of Appellate Court.—Original jurisdiction to restrain or enjoin any public official from doing any act authorized by any act of the general assembly and to mandate any public official to do any act prohibited by any act of the general assembly is hereby conferred on the Appellate Court of Indiana. Said jurisdiction shall be invoked by the Attorney-general's removal, pursuant to this act (§§ 3-2121–3-2131), of an action from the court in which it is filed, and thereafter the Appellate Court of Indiana shall have jurisdiction of all further proceedings in any case so removed. This grant of jurisdiction shall carry with it complete jurisdiction to hear and determine the entire action in which such relief is demanded, but if it appears to the Appellate Court of Indiana that there is no equity in the demand for injunctive or mandatory relief against any public official, the suit shall be dismissed without prejudice as to the other relief demanded, or it may be remanded to the court from which it was removed, without making any adjudication not necessary to the denial of injunctive or mandatory relief. (Acts 1965 (2nd Spec. Sess.), ch. 7, § 2, p. 28.)

Burns 3-2122. Removal of cases to Appellate Court—Duties of attorney-general.—If in any case pending on the

date this act (§§ 3-2121—3-2131) shall become effective (October 29, 1965) or in any case filed thereafter in any court of this state except the Supreme or Appellate Courts, a demand is made for the restraint or injunction of a public official from doing any act authorized by any act of the general assembly, whether valid or invalid, constitutional or unconstitutional, or demanding the mandate of any public official to perform any act prohibited by any act of the general assembly, whether valid or invalid, constitutional or unconstitutional, the attorney-general shall remove such case to the Appellate Court of Indiana whenever he deems it necessary or desirable for the purposes of the uniform and orderly enforcement and effectiveness of acts of the general assembly of state-wide public interest and concern that the case be determined by a court with state-wide jurisdiction.

After removal of the case to the Appellate Court of Indiana, the court from which the case is removed, and the judge thereof, shall have no further jurisdiction in the proceedings, unless the case is remanded or transferred to that court by the Appellate Court of Indiana pursuant to this act. (Acts 1965 (2nd Spec. Sess.), ch. 7, § 3, p. 28.)

Burns § 3-2123 Time and method of removal to Appellate Court.—No cases shall be removed pursuant to this act (§§ 3-2121—3-2131) before this act shall have been effective for a period of fifteen (15) days, except as otherwise provided in this act. The removal of cases pending on the effective date of this act, (October 29, 1965) or within fifteen (15) days thereafter shall be effected by the attorney-general within forty-five (45) days after the effective date of this act. Thereafter, the attorney-general shall have thirty (30) days after service of notice or a

copy of the pleading demanding such relief upon him in which to remove a cause to the Appellate Court of Indiana pursuant to this act. Such removal shall be effected when the attorney-general files with the clerk of the Appellate Court of Indiana, a verified petition for removal, together with copies of all pleadings, motions, demurrers, orders, injunctions, mandates and order-book entries in the cause, and serves notice thereof by first class mail on all parties to such action or on their attorneys of record. Such filing shall constitute a removal of said cause to the Appellate Court of Indiana which shall thereafter have jurisdiction of all further proceedings. (Acts 1965 (2nd Spec. Sess.), Ch. 7, § 4, p. 28.)

Burns § 3-2124. Petition for remand.—In any case which has been removed to the Appellate Court of Indiana pursuant to this act (§§ 3-2121—3-2131), any party may file a verified petition supported by a brief and serve notice on all other parties, or on their attorneys, requesting the court to remand the case to the court in which it was filed on the ground that the removal is contrary to law in that the attorney-general's determination that it is necessary or desirable for the purposes of the uniform and orderly enforcement and effectiveness of valid acts of the general assembly of state-wide interest and concern that the cause be determined by a court with statewide jurisdiction is arbitrary, capricious or illegal. Such petition shall be filed within thirty (30) days after the removal is effected. Petitioner shall be entitled to a hearing before a commissioner appointed by the Appellate Court of Indiana pursuant to this act. Said petition shall be granted or denied at the discretion of the Appellate Court of Indiana en banc.

The filing of a petition pursuant to the provisions of this section shall not delay or postpone any other hear-

ings, arguments, determinations or expirations provided for under other sections of this act. (Acts 1965 (2nd Spec. Sess.) ch. 7, § 5, p. 28.)

Burns § 3-2125. Rules of Appellate Court.—The Appellate Court of Indiana shall adopt and promulgate rules for the exercise of the jurisdiction conferred on it by section 2 (§ 3-2121), hereof. Such rules may, at the discretion of the Appellate Court of Indiana, provide for orders of reference to any judge of a court of inferior jurisdiction to facilitate the taking of evidence and conduct of hearings, including hearings and the taking of evidence incidental to the enforcement of any restraining order, temporary injunction, permanent injunction, or writ of mandamus issued by the Appellate Court of Indiana or its judges. More than one reference may be made simultaneously or successively as the exigencies of the case and the convenience of witnesses and parties may require.

Such rules shall provide for the manner of continuance or expiration of orders issued by the court in which the cause was filed consistent with the provisions of this act (§§ 3-2121—3-2131). (Acts 1965 (2nd Spec. Sess.), ch. 7 § 6, p. 28.)

Burns § 3-2126. Oral argument—Dissolution or continuance of restraint or mandate—Hearing on permanent injunction or mandate.—At the time of removal of a case by the attorney-general, the chief justice of the Appellate Court of Indiana, or in his absence, the presiding justice, shall fix a date and hour not less than three (3) days nor more than seven (7) days after the date of removal, on which oral arguments will be heard and additional affidavits received on the question of whether any restraining order or preliminary mandate issued by the court in which the case was filed shall be continued in effect until the question of granting a temporary injunction or writ of

mandate is heard and determined. The court en banc shall hear such arguments and review whatever additional affidavits may be offered by any party, and unless at least five (5) judges who hear such oral arguments sign an order on the day of such argument continuing the restraint or mandate in effect as originally issued or as modified by a new order, all restraint or mandate shall thereupon stand dissolved by operation of law. The presence of less than five (5) judges at the time stated in the order for the argument shall also have the effect of dissolving the restraining order or writ of mandate.

Every continuance of a restraining order or preliminary mandate after oral argument shall contain a statement of the date, time and place of hearing on the question of granting a temporary injunction and the name of a judge of an inferior court who will conduct such hearing as commissioner of the Appellate Court of Indiana, whose duty it shall be to report the evidence verbatim to the Appellate Court of Indiana with his recommended findings of fact and conclusions of law within fifteen (15) days of the date set in the order for the hearing.

Any temporary injunction or mandate issued prior to removal shall expire or survive after removal upon the same contingencies and by the same procedures provided for the survival or expiration of restraining orders or preliminary writs of mandate issued prior to removal. Any party may submit to the Appellate Court of Indiana at the oral argument a complete transcript of the evidence on the basis of which the judge or court issued the order or injunction or preliminary mandate being reviewed. Every continuance of a temporary injunction or mandate after oral argument shall contain a statement of the date, time and place of hearing on the question of granting a

permanent injunction or writ of mandate, and the name of a judge of an inferior court who will conduct such hearing as commissioner of the Appellate Court of Indiana, whose duty it shall be to report the evidence verbatim to the Appellate Court of Indiana with his recommended findings of fact and conclusions of law within fifteen (15) days of the date set in the order for the hearing.

Temporary injunctions, permanent injunctions and writs of mandate may be granted or denied by the Appellate Court of Indiana only when sitting en banc. (Acts 1965 (2nd Spec. Sess.), ch. 7, § 7, p. 28.)

Burns § 3-2127. Transfer to Supreme Court limited.—No petition to transfer to the Supreme Court may be filed in an action removed to the Appellate Court of Indiana pursuant to this act. (§§ 3-2121—3-2131) prior to a grant or denial of a permanent injunction or writ of mandate or other final adjudication. A final adjudication may be reviewed by the Supreme Court in the same manner and following the same procedures required for transfer in other civil cases. (Acts 1965 (2nd Spec. Sess.), ch. 7, § 9, p. 28.)

Burns § 3-2128. Writs and orders—Authority of Appellate Court to issue.—The Appellate Court of Indiana is hereby authorized to issue all writs and orders necessary to effectuate its jurisdiction under this act (§§ 3-2121—3-2131). (Acts 1965 (2nd Spec. Sess.), ch. 7, § 10, p. 28.)

TERMINATION OF M.T.A. STATUTE

Burns § 48-9213. Existing boards, agencies and commissions.—At the time all or substantially all of the power and duties of any agency, board or commission of a first class city are transferred under the terms of this act

(chs. 91-95 of this title) to any departments, special taxing districts or special service districts of the consolidated city, such agency, board or commission of the first class city shall be abolished.

At the time the power and duties to perform any function is transferred from any agency, board or commission of the first class city, the county or any body corporate to the consolidated city, or any department, special taxing district or special service district thereof, the property, records, personnel, contracts and all other rights and liabilities thereof related to such function, including all rights and obligations arising under any pension or retirement plan or fund shall be similarly transferred except as follows: (1) the city-county council may by ordinance direct a different repository therefor; (2) general obligation bonds or other indebtedness of the first class city or indebtedness assumed by the first class city, other than bonds or indebtedness relating to the function of a special service district, shall be binding upon and obligations of the consolidated city; (3) bonds or indebtedness relating to any function transferred to a special service district shall be binding upon and obligations of the consolidated city; (4) bonds and indebtedness of any special taxing district shall be the obligation of the special taxing district which continues the function of the special taxing district on account of which such bonds and indebtedness were issued. Nothing in this act shall be construed to impair the obligation of any indebtedness or contract existing on the effective date (January 1, 1970) of this act.

All proceedings and petitions pending before any board, commission or other agency at the effective date the powers thereof are transferred under the terms of this act shall be transferred to the official, board, commission

or agency who would have the power to act upon such proceeding or petition under the terms of this act.

All other municipal corporations, boards, agencies and commissions created by applicable law, or by any ordinance until such ordinance is amended, shall not be affected by this act, except to the extent that such powers are transferred to the consolidated city or department thereof or are otherwise limited under this act. Without limiting the generality of the following enumeration, such municipal corporations, boards, agencies, authorities and commissions shall include: airport authority and board established pursuant to Acts 1961, c. 283 (§§ 14-1301—14-1336); health and hospital corporation and board established pursuant to Acts 1951 c. 287 (§§ 35-902—35-950); county department of welfare and board established pursuant to Acts 1936 (Spec. Sess.), c. 3. (§§ 52-1001, 52-1101—52-1130, 52-1201, 52-1278, 52-1301—52-1315, 52-1401—52-1417); county home board established pursuant to Acts 1965, c. 119 (§§ 22-2801—22-2819); building authority, board of trustees and board of directors established pursuant to Acts 1953, c. 54 (§§ 26-2501—26-2523); capital improvements board of managers established pursuant to Acts 1965, c. 326 (§§ 26-2801—26-2824); housing authority established pursuant to Acts 1937, c. 207 (§§ 48-8101—48-8127), except to the extent expressly limited or changed by Article VIII (§§ 48-9326—48-9339) of this act; library districts and boards thereof established pursuant to Acts 1947, c. 321 (§§ 41-901—41-921); and any school corporation, all or a part of the territory of which is in the consolidated city or county. Where, however, after the effective date of this act, the power to make an appointment to the governing body or any other board connected with such board, agency or commission, or the power to take any action in connection with the operation of such

board, agency or commission, is vested in the county council of the county or the common council of the first class city, such power shall be vested in the city-county council. (Acts 1969, ch. 173, § 314, p. 357.)

SUPREME COURT EQUALLY DIVIDED RULE AND STATUTE

Indiana Rules of Civil Procedure

Appellate Rule 15

Opinions, Powers, and Conduct of Court on Appeal; Miscellaneous Provisions

* * *

(E) Supreme Court equally divided. Whenever, on the hearing of an appeal, one of the judges of the Supreme Court has been of counsel in the cause, or is otherwise disqualified to participate in the decision, and the remaining judges are equally divided, the judgment shall be affirmed without cost. In such case, each judge shall give his written opinion of each point in the case arising upon the record, which shall be reported among the cases decided by the Supreme Court.

Burns' § 2-3272 (726) One judge interested, others equally divided—Procedure.—Whenever, on the hearing of an appeal, one of the judges of the Supreme Court has been of counsel in the cause, or is otherwise incompetent to participate in the decision, and the remaining judges are

equally divided, the cause shall be continued to the next term; and if, then, the judges shall be equally divided, the judgment shall be affirmed without costs, and in such case, each judge shall give his written opinion of each point in the case arising upon the record, which shall be reported among the cases decided by the Supreme Court. (Acts 1881 (Spec. Sess.) ch. 38, § 54, p. 240.)

WAIVER BY APPEARANCE STATUTE

Burns' § 2-803. Service of summons—Waiver or appearance—Guardian ad litem for insane.—The summons shall be served, either personally on the defendant, or by leaving a copy thereof at his usual or last place of residence. An acknowledgment on the back of the process, or the voluntary appearance of a defendant, is equivalent to service. Process against persons of unsound mind shall be served upon the guardian of such persons, if there be a guardian. If no guardian shall have been appointed, then such process shall be served, by copy, upon the superintendent of the hospital in which such person shall be confined, or upon the person having charge or custody of such person; in which case, upon proof of the insanity of the defendant, the court shall appoint a guardian ad litem for such defendant, whose duty it shall be to make proper defense to such action. (Acts 1881 (Spec. Sess.) ch. 38, § 56, p. 240.)

APPENDIX C

STATE OF INDIANA, on the relation of the MASS TRANSPORTATION AUTHORITY OF GREATER INDIANAPOLIS, A Municipal Corporation, Plaintiff,

v.

INDIANA REVENUE BOARD, Roger D. Branigin, as a Member of the Indiana Revenue Board JOHN K. SNYDER, Treasurer of the State of Indiana, and as a Member of the Indiana Revenue Board, JOHN P. GALLAGHER, Auditor of the State of Indiana, and as a Member of the Indiana Revenue Board, INDIANA DEPARTMENT OF STATE REVENUE, WILLIAM L. FORTUNE, as Commissioner of the Indiana Department of State Revenue, THE STATE BOARD OF TAX COMMISSIONERS, LARRY R. MOHR, HERBERT C. HOLMES, as Members of the State Board of Tax Commissioners of Indiana, T. MICHAEL SMITH, as Inheritance Tax Administrator, Defendants.

No. 767A39

Supreme Court of Indiana
January 22, 1969

ORDER

Pursuant to the defendants' Petition for Instruction filed herewith, and upon the case of *State ex rel. Socialist Labor Party v. State Election Board* (1968) —— Ind. ——, 241, N.E. 2d 69, it is

ORDERED that a Petition for Rehearing before t
Appellate Court is not necessary for the filing of an app
cation to transfer this case to this court.

Dated this 22 day of January, 1969.

/s/ ROGER O. DeBRULER

Roger O. DeBruler
Chief Justice